IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 850 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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REHMATKHANJI DILAVARKHANJI MALEK - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR DILIP B RANA for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
MS. ARCHNA RAVAL, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/02/2006

ORAL JUDGMENT

1.Rule. Ms. Archna Raval, learned AGP waives service of rule on behalf of the respondents.

2. By way of this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the respondent No.2 i.e. The Additional Collector, Ghudkhar Sanctuary, Surendranagar dated 31.8.2005.

3. It is the contention on behalf of the petitioners that Notice was issued in the year 1999 and the hearing took place in the year 1999 and the original claimant submitted the documentary evidences in support of their claim however, the impugned order came to be passed not only without considering the documentary evidences placed on record but even no opportunity of hearing was given by the Officer who has passed the impugned order dated 31.8.2005 and that the hearing was taken place before another Officer in the year 1999 and the impugned order came to be passed in the year 2005 by some other Officer and therefore, the impugned order is in breach of the principles of natural justice.

4. Ms. Archna Raval, learned AGP has tried to support the impugned order passed by the respondent No.2 dated 31.8.2005 however, no affidavit-in-reply is filed denying that the hearing was taken place before another

Officer in the year 1999 and the order dated 31.8.2005 is passed by some another Officer.

5. Under the circumstances, when the hearing was taken place before another Officer and the order is passed by the another Officer, considering the judgment of this Court in case of ***M.D.Gohil*** V/s. ***State of Gujarat*** reported in **1996(3) GLR Page-134** and another judgment of this Court in case of ***(M/s) Shree Ram Packaging & Another*** V/s. ***Union of India & Another*** reported in **1990(2) GLH Page-343**, the impugned order dated 31.8.2005 is in breach of principles of natural justice and the same is required to be quashed and set aside and the matter is required to be remanded to the respondent No.2 for passing an appropriate order in accordance with law and on merits, after giving an opportunity of hearing to the petitioners. Shri D.B.Rana, learned advocate appearing on behalf of the petitioners has submitted that one of the petitioner on behalf of all the petitioners will remain present before the respondent No.2 for making submissions on **1st March, 2006** at the first instance and if necessary, another date can be given by the respondent No.2.

6. For the reasons stated above, the petition succeeds in

part. The impugned order dated 31.8.2005 is hereby quashed and set aside and the matter is remanded to the respondent No.2 for passing an appropriate order in accordance with law and on merits as stated herein above and the respondent No.2 is directed to pass an appropriate order as early as possible preferably within a period of 8 weeks from the date of receipt of this order. However, it is made clear that this Court has not expressed any opinion on the merits of the case and it is, ultimately, for the respondent No.2 to pass an appropriate order in accordance with law and on merits considering the submissions and the documentary evidences submitted on behalf of the petitioners.

7. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

Direct Service is permitted.

(M.R.SHAH, J.)

kdc.